

**SHASTA COUNTY DEPARTMENT OF AGRICULTURE**  
**WORKPLAN 2006-2007**

**I. Restricted Materials Permitting**

a. Permit Evaluation and Issuance

Background

Permits for restricted materials (RMs) are issued by any of the six licensed staff members to the operator of the property to be treated or the operator's designated representative. Although several multi-year permits are issued annually, the vast majority of the permits are issued for one year, and typically expire on December 31<sup>st</sup> in the year of issuance.

Permits undergo a thorough evaluation at the time of issuance. A checklist is reviewed during the process to ensure that all required elements are considered and the appropriate mitigating measures are included in the permit. When a permit is issued, it is conditioned or denied based upon determination of the licensed staff, including materials requested by the permittee, the local environment (including the location of sensitive sites), the compliance history of the applicant, and the comprehensive review by licensed staff.

The Shasta County Department of Agriculture (SDA) has developed a standard restricted materials permit condition sheet that is completed for every permit applicant. The condition sheet outlines general precautionary steps to take when using pesticides. Several pesticides identified as those of particular concern, such as acrolein, have their own unique condition sheet that outlines mitigating measures that applicators must abide by.

Site specific maps for each location listed on the permit are developed utilizing GIS data. Data printed on the maps includes site boundaries, crops, adjacent sites, sensitive sites, and other information critical to determining the appropriate conditions for the site.

A Notice of Intent (NOI) is to be submitted 24 hours before the application of any restricted material. This requirement completes the time specific element of the pesticide permitting process. The NOI requirement and procedure is reviewed with the permittee. Each NOI submitted is reviewed and initialed by the licensed staff to verify that it is in compliance with all applicable requirements and has been approved.

If the permit applicant has employees that work as handlers and/or fieldworkers, the appropriate training requirements and documentation material is provided. In addition, blank pesticide use report forms are provided to the applicant.

### Goal

The goal of the SDA is to comply with all requirements applicable to the issuance of RM permits in order to ensure their proper and prompt issuance to pesticide users and to ensure the safety and protection of Shasta County's citizens and environment.

### Deliverables

- Comply with all laws, regulations, and Department of Pesticide Regulation (DPR) policies and guidelines for issuing RM permits.
- Replace hand drawn maps in RM permits with computer generated maps.
- Have only properly licensed staff issue RM permits.
- Evaluate every RM permit for adverse impacts.
- Condition all RM permits with applicable mitigation measures.
- Document the issuance or denial of all RM permits on county log.
- Record all NOIs.
- Have licensed staff approve, modify, or deny all NOIs.
- Provide permit issuance training to all licensed PUE staff.
- Management will conduct periodic, random reviews of RM permits throughout the year to assure that the SDA and DPR quality requirements are being met. Any identified deficiencies will be noted, reviewed with staff, and general problems will be discussed during staff training.

### Strengths of the Program

- Four of the six staff members who issue RM permits have in excess of seven years of experience in issuing permits.
- Permit maps are now generated using GIS data gradually replacing hand drawn maps of previous years.
- Only the PUE Program Investigator issues permits for fumigants.

### Weaknesses of the Program

- The initial development of site maps is labor intensive and time consuming resulting. This has increased the amount of time it takes to issue RM permits.

### Measures of Success

The success of the Shasta County Department of Agriculture's RM permitting process will be documented by the review of RM permits, as described above. Each permit will be reviewed for requirements, including but not limited to: map quality/ accuracy, certification status (i.e., current PAC card on file), site evaluation, and general and specific permit conditions forms signed. In addition, the Enforcement Branch Liaison (EBL) conducts an external evaluation at least every three years. This evaluation may include a review of RM permits, Pesticide Regulatory Activities Monthly Report (PRAMAR) data, and the NOI log. The SDA Deputy will review and discuss the evaluation with the EBL and then review the evaluation with the Agricultural Commissioner prior to discussing it with SDA PUE staff.

If the EBL documents any unmet deliverables, the Deputy will provide information to the EBL regarding the situation and will work with the EBL to develop a mutually agreed upon action plan to correct any deficiencies.

#### b. Pre-Application Site Monitoring Plan

### Background

Licensed staff will monitor RM permits and NOIs as required in CCR Section 6436. A minimum of five percent of the NOIs received by the SDA will be monitored. Monitoring will include a review of all NOIs received to determine which fields should be checked prior to application. Consideration will be given to those NOIs for highly toxic materials, such as Category I pesticides (especially fumigants), environmental concerns such as

endangered species and groundwater issues, safety issues, such as proximity to schools or other sensitive sites, Section 18 applications, etc.

The compliance history of the applicant will also be considered. Permittees with documented non-compliance(s) on inspection reports in the previous year will be monitored with greater frequency. Copies of all inspections and compliance actions will be maintained in the permittee's files and will be used by staff to evaluate the need for increased monitoring.

All non-ag permit holders are to be inspected at least once a year if they apply pesticides.

### Goal

The goal of site monitoring is to examine sites scheduled to be treated in an effort to determine compliance with applicable laws and regulations and site-specific permit conditions. The prioritization of the site inspections must take into consideration the circumstances of the application. Those circumstances include, but are not limited to, the toxicity of the material, the application location, and local environmental conditions surrounding the site, safety considerations, and the applicator's compliance history.

### Deliverables

- Perform pre-application site inspections on a minimum of 5% of the NOIs submitted.
- Each calendar year reviews the previous year's permits. From that review develop a list of permittees who have recorded non-compliances related to RM use in the previous year in order to help staff prioritize inspections.
- Prioritize inspections based on the following criteria:
  1. Methyl bromide NOIs receive the highest priority;
  2. Pre-application site inspections are to be performed on all RM applications adjacent to a school site;
  3. Pre-application site inspections will be performed on at least 50% of the permittees who are listed as having a RM related non-compliance during the course of the last year;
  4. Pre-application site inspections will be performed on at least 20% of the applications of GWP materials in sections identified as GWP areas;
  5. Pre-application site inspections will be performed throughout the county in order to assure that all types of RM applications are adequately monitored.

### Strengths of the Program

- Pre-application inspections are and will continue to be conducted, with rare exceptions, on all agricultural fumigations.
- Pre-application inspections are performed on over 5% of the NOIs received by the Department.

### Weaknesses of the Program

- The majority of restricted material applications are performed in Intermountain area, approximately 70 miles from the Department. Because of the travel requirements staff is not always able to select the highest priority sites for inspection.

### Measures of Success

Success will be achieved by meeting the requirement to conduct pre-application site inspections on at least 5% of the NOIs received and verifying that the prioritization of inspections was implemented. Success will also be based on verifying that inspections were carried out in all areas of the county on a wide variety of crops and on farms and ranches of all sizes.

## **II. Compliance Monitoring**

### **a. Comprehensive Inspection Plan**

#### Background

The department's pesticide regulatory inspection reports completed in FY 2005-2006 were reviewed in an effort to determine the overall compliance rate and to identify any areas where non-compliances were consistently documented.

The review revealed that approximately 37% of the inspections were scheduled and the remaining 63% were performed at random. Most of the scheduled inspections include Headquarter/Employee Safety inspections, scheduled fumigations, and initial non-agricultural application inspections. The random inspections were the result of ongoing general surveillance in the urban and rural areas throughout the county, a daily review of the NOI log, and the department's knowledge of local agricultural practices.

#### Goal

The goal of the SDA's pesticide regulatory program is to maintain the high compliance rate in those areas of exceptional compliance such as Structural Branch 2 & 3 Pesticide Application Inspections and to increase the rate of compliance in all other areas, but especially in the Grower/Pest Control Pesticide Applications.

#### Deliverables

- Increase the number of Pesticide Use Application inspections of grower/property operators during FY 06-07 from 30 to 35.
- Increase the number of HQ Employee Safety Inspections for businesses from 8 to 13.
- Maintain the level of inspection for other inspections as indicated in the following chart. The figures may change during the course of the year depending on the types of applications that actually take place, staffing shortages, or emergency situations.
- Modify applicable training provided by the department to emphasize the areas of greatest non-compliance.
- Evaluate all inspection reports for compliance using monitoring tools developed by the Department and DPR.
- Continue to use there tools annually to modify and direct training into those areas that have generated the greatest number and/or the most serious violations.

FY05-06 Deliverables Inspections by Type	
Type of Inspections	Number of Inspections
Application – Grower/Property Operator	35
Application – Pest Control Business	25
Application – Structural Branch 2 & 3	30
Field Worker Safety	5
Property Operator Mix/Load	8
PCB Mix/Load	8
Field Fumigation	15
Commodity Fumigation	1
Structural Fumigation	1
Grower/Property Operator HQ/Employee	35
PCB HQ/Employee	13
Structural HQ/Employee	8
PCB Business Records	18
PC Dealer Records	2
PC Advisor Records	3
Structural PCB Records	8

#### Strengths of the Program

- Inspections are thorough and complete.
- With the exception of some fumigation inspections, field pesticide use application inspections are the result of surveillance activities or random sightings, not of scheduled or preplanned inspections. The only other scheduled inspections are the HQ/Business records, Dealers or Advisors inspections.
- Follow up inspections are tracked and completed in a timely manner.
- Most field inspections are performed on tablet PC, assuring that staff address every inspection requirement.
- Staff attends and makes presentations at annual pesticide training events for growers, QALs with employees, structural licensees with employees.

#### Weaknesses of the Program

- No one on staff is fluent in Spanish or Mien, the predominant non-English language of agricultural field workers in the county, although we have

access to interpretation services and assistance from other County employees fluent in these languages.

- The majority of pesticide applications are made in Intermountain area, approximately 70 miles from Department office. The extensive travel time decreases our ability to do more inspections and to do more inspections outside of normal business hours.

#### Measures of Success

The success of the SDA's Compliance Inspection Plan will be determined by several measures, including the completion of the inspection plan contained in the table above, focusing training on the areas that produce the most non-compliances, and in decreasing the number of non-compliances for the two problem areas, Property Operators & Pest Control Businesses Application Inspections and Grower/Property Operator Headquarter Inspections.

The number of inspections listed in the Compliance Inspection Plan are tracked on a monthly basis and may be modified, depending upon the number of enforcement actions taken for violations, in accordance with the Enforcement Response Regulations.

#### b. Investigation Response and Reporting

##### Background

During FY 05-06 the Shasta County Department of Agriculture received two investigation notifications from DPR and two citizen complaints. None of the notifications were priority investigations. All of the investigations were completed and the accompanying report submitted to DPR within the 120-day deadline.

##### Goal

The goal of the program is to complete all investigations in a timely manner with accurate, complete, and supportive information, in conformance with all applicable policies, procedures, and guidelines.

##### Deliverables

- Initiation and completion of all Priority Investigations in a timely manner.
  1. Begin Priority Investigations within two working days of receiving notification.
  2. Request assistance from DPR staff on Priority Investigations, when appropriate.
  3. Submit preliminary update on Priority Investigations to DPR within fifteen days.

4. Complete and submit Final Priority Investigation Reports to DPR within 120 days, or request extension, in writing.
- Develop and use Investigation Plan (as outlined in Hearing Officer Sourcebook)
    1. Develop list of elements for each violation being investigated.
    2. Develop report utilizing Investigation Plan (see Attachment 1).
    3. Include all supporting documentation and evidence in report.
    4. Take appropriate Compliance or Enforcement Action, as required by Enforcement Response Policy/Regulations.
    5. Provide investigation training to new staff.
    6. Provide ongoing training to all pesticide regulatory staff and include new requirements such as the recently adopted Pesticide Enforcement Response Regulations, SB 391 requirements including, etc.

#### Strengths of the Program

- Four of the six staff members who are licensed to investigate pesticide incidents/illnesses/complaints have in excess of seven years of experience in pesticide program work.
- Investigations are timely, thorough, and complete.

#### Weaknesses of the Program

- No one on staff is fluent in Spanish or Mien, the predominant non-English language of agricultural field workers in the county, although we have access to interpretation services and assistance from other County employees fluent in these languages.

#### Measures of Success

Success will be measured by the timeliness of submission of priority investigations and DPR's annual evaluation by the EBL. The SDA Deputy and staff will discuss with the DPR EBL, on an annual basis, all Priority Investigations and Enforcement and/or Compliance Actions taken by SDA. Periodic review of all investigations and actions by SDA staff will be completed to assure timelines are met and reports and investigations are complete.

Specifically, complete all priority investigations within 60 days of the date of the priority incident or when Shasta County Department of Agriculture was notified of the incident, unless statutory changes require a different timeline. All non-priority investigations are



to be completed within 120 days. The number of returned or incomplete investigations will also show a direct correlation to the success of this program.

### **III. Enforcement Response Evaluation**

#### Background

The Deputy Agricultural Commissioner reviews all inspection and investigation reports. Those that contain a non-compliance are assessed to determine if additional action is warranted. If the Deputy determines that such action is needed, he will meet with the Investigator and determine, based on the pending Enforcement Response regulations and other applicable policies or requirements, a preliminary course of action. Each inspection and investigation is considered for progressive action as outlined in the Enforcement Response regulations, the Department's NOPA Resource book, etc.

If the matrix determines that a Compliance Action is warranted, the decision to take that level of action is made by the Deputy Commissioner. If Enforcement Action is warranted, the final decision to take action is made by the Agricultural Commissioner.

During the analysis period, the inspection or investigation is thoroughly reviewed to ensure that adequate evidence is present to prove all elements of any cited violations. If the evidence is insufficient to determine a course of action, the case is returned to the Investigator for further investigation or if inadequate evidence is available the case is closed.

Compliance Actions, such as Warning Letters and Documented Compliance Interviews, are generally written by an Investigator and reviewed by the Deputy Commissioner before being issued. The Deputy Commissioner is responsible for the development of enforcement actions with substantial input by the primary Investigator. If an Enforcement Action is recommended, it is forwarded to the Agricultural Commissioner for review and approval.

When an Administrative Civil Penalty is taken, the fine guidelines, as listed in CCR3 Section 6130 or Title 16 Section 1922 are followed or any other applicable statute or regulation, as are the timelines for due process.

Compliance and enforcement actions are to be completed and submitted to the Deputy for review as outlined in the timetable listed in the DELIVERABLES section below. In most cases, actions should be delivered to the respondent with 45 days of the inspection or completion of the investigation.

#### Goals

The goal of the Enforcement Response plan is to complete a thorough investigation and provide an appropriate response, in a timely manner, that will result in future compliance by the respondent. The actions must be consistent with DPR guidelines, be uniformly applied, and fairly enforced to maintain the confidence of the regulated industry and the public.

### Deliverables

- Consideration of all appropriate enforcement options
  1. Proper application of the Regulatory Enforcement Policy and future regulations
  2. Use of NOPA Resource Book
  3. Proper application of Fine Guidelines
- Timely response from time of submission of non-compliant report
  1. Day 1 – Submit completed Inspection Report or completed Investigation Report with evidence of non-compliance and suggestion for appropriate action to Deputy for initial review.
  2. Day 2 through 7 – Review by Deputy. If complete, discuss suggested response recommendation with Investigator. If incomplete return to Investigator for completion.
  3. Day 2 through 14 – Deputy develops recommendation for compliance, enforcement, or no action.
  4. Day 14 through 21 – Compliance actions completed and written summary sent to respondent within three business days of completion. Simultaneously copy of written summary placed in file.
  5. Day 14 through 28 – Enforcement action file completed and approved by Deputy.
  6. Day 28 through 35 – Enforcement action file reviewed by Commissioner. If approved appropriate documents are signed and mailed. The file may also be returned to Deputy for additional review or rejected.
  7. Day 28 through 42 – If returned to the Deputy, it is modified as needed and then the enforcement file resubmitted to Commissioner for final action and processing.
- Cases, especially those “rejected” for further action, will be reviewed with pesticide regulatory staff during training sessions.

### Strengths of the Program

- Three of the six staff members have experience in developing Enforcement Action and writing Notices of Proposed Actions.

- Template for the more common type of Notice of Proposed Actions has been developed to streamline the process.

#### Weaknesses of the Program

- Enforcement Actions tend to get bottlenecked in the review portion of the system.
- The only staff member with Hearing Advocate experience is the Deputy Commissioner.

#### Measures of Success

Success can be measured by the adherence to the enforcement response timetable on the previous page.